

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**

THE PENNSYLVANIA STATE  
UNIVERSITY,

Plaintiff and  
Counterclaim Defendant,

v.

VINTAGE BRAND, LLC,

Defendant and  
Counterclaim Plaintiff.

Case No. 4:21-cv-01091-MWB

JURY TRIAL DEMANDED

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**PLAINTIFF THE PENNSYLVANIA STATE UNIVERSITY’S PARTIAL  
ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANT  
VINTAGE BRAND, LLC’S COUNTERCLAIM IV**

Plaintiff and Counterclaim Defendant The Pennsylvania State University (“Penn State”), by and through its undersigned counsel, hereby submits its Partial Answer and Affirmative Defenses to Defendant and Counterclaim Plaintiff Vintage Brand, LLC’s (“Vintage Brand”) First Amended Counterclaim IV (ECF 31) (“Counterclaim”) in this action. Penn State denies all allegations in Vintage Brand’s Counterclaim not specifically admitted below. In responding to Counterclaim IV, Penn State uses the heading employed by Vintage Brand strictly as a convenience to the Court, and does not admit any allegation made in, or inference suggested by, such heading. Penn State answers the numbered paragraphs of the Counterclaim as follows:

**COUNT IV**

**Cancellation of Registration Nos. 5,305,910, 5,766,698 & 5,877,080**  
**([Alleged] Failure to Function / [Allegedly] Merely Ornamental)**

39. Penn State incorporates its responses to all preceding paragraphs (as set forth in ECF 36) as if fully set forth herein.

40. Admitted that Registration No. 5,766,698 was obtained by Penn State following the filing of Application Serial No. 87/639,315 on October 10, 2017. The remaining allegations in this paragraph are denied.

41. This paragraph contains a legal conclusion to which no response is required. Registration No. 5,766,698 speaks for itself, and Penn State denies any allegations in Paragraph 41 that are inconsistent therewith.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

**[PRAYER FOR RELIEF]**

Penn State denies all factual assertions contained in Vintage Brand's prayer for relief and further denies that Vintage Brand is entitled to any relief in this action.

### **AFFIRMATIVE DEFENSES**

Penn State sets forth its Affirmative Defenses to Counterclaim IV below. Given that Penn State had asserted Affirmative Defenses previously to Counterclaims I through III, and in order to avoid confusion in the pleadings, Penn State is reasserting affirmative defenses here that apply to Counterclaim IV, and omitting Affirmative Defenses that are only applicable to Counterclaims I through III.

#### **FIRST DEFENSE**

Vintage Brand has failed to state a claim upon which relief can be granted.

#### **SECOND DEFENSE**

The Counterclaims fail because of Vintage Brand's unclean hands.

#### **THIRD DEFENSE**

The Counterclaims are barred in whole or in part under the applicable statute of limitations and/or the doctrine of laches.

#### **FOURTH DEFENSE**

The Counterclaims are barred in whole or in part because Vintage Brand has suffered no provable damages in this case.

#### **SIXTH DEFENSE**

Count IV of the Counterclaims fails as an impermissible collateral act to the extent Penn State already owns incontestable registrations under 15 U.S.C. § 1065 covering identical or substantially similar marks for identical goods.

### **SEVENTH DEFENSE**

Count IV of the Counterclaims fails because the trademark registrations challenged under Count IV are inherently distinctive or have acquired distinctiveness pursuant to 15 U.S.C. § 1052(f).

### **NINTH DEFENSE**

Penn State reserves all remaining defenses.

Dated this 3rd day of August, 2022.

Respectfully submitted,

**MCGUIREWOODS LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing Partial Answer and Affirmative Defenses to Counterclaim IV with the Clerk of the Court using the CM/ECF system on this 3rd day of August, 2022, which constitutes service on Defendants pursuant to Fed. R. Civ. P. 5(b)(2)(E):

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